IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4064 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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NARENDRA ALIAS LALO JAYANTILAL MODI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 4064 of 2001

MR DHARMESH V SHAH for Petitioner No. 1

MR KT DAVE AGP for Respondent No. 1-3

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 11/09/2001

ORAL JUDGEMENT

1. By filing this petition under Article 226 of the Constitution, petitioner -detenu who has been detained by the District Magistrate, Bharuch, vide order dated February 13, 2001, Annexure A to the petition, in exercise of powers conferred under section 3 (2) of the

Gujarat Prevention of Antisocial Activities Act, 1985 ('the Act' for short) has assailed the order of detention on various grounds and prayed to issue appropriate writ, order or direction quashing and setting aside the impugned order of detention and further prayed to set him at liberty forthwith.

2. Averments made in the petition and the grounds of detention manifest that the detaining authority considered the petitioner as a bootlegger within the meaning of Section 2 (b) of the Act and also an offender within the meaning of Section 2 (g) of the Act and as two cases under the Bombay Prohibition Act and one case under the Suppression of Immoral Traffic in Women and Girls Act, 1956 are registered against the detenu which are still pending and statements of three witnesses were recorded, according to the detaining authority, the activities of the detenu are prejudicial to the maintenance of public order and, therefore, powers under Section 9 (2) of the Act were exercised by the detaining authority by not disclosing the names of the witnesses, and detained the petitioner -detenu.

3. The petitioner has challenged the order of detention on various grounds. However, Mr. Dharmesh Shah, learned advocate for the petitioner restricted his arguments to the point that the detaining authority has not supplied legible copies of documents relied upon by him while passing the impugned order of detention and on this sole ground the petition deserves to be allowed as the right of the petitioner to make effective representation is seriously prejudiced. Besides this, so far as the first case filed under Prohibition Act is concerned, the said case is registered in the year 1999 and, therefore, on the basis of the stale material the order of detention cannot be passed. He also contended that so far as the case under the Suppression of Immoral Traffic in Women and Firls Act, 1956 is concerned, it is an isolated case against the petitioner and the detaining authority has stated in his order that the petitioner is contiouously engaged in the said activities after he is released on bail. Therefore, subjective satisfaction recorded by the detaining authority is not genuine and hence the order of detention is bad in law. He, therefore, urged to allow this petition by quashing and setting aside the impugned order of detention and setting the petitioner - detenu at liberty forthwith.

4. Though reply affidavit is not filed, Mr. K.T. Dave, learned AGP has opposed this petition by making oral submissions. He contended that the petitioner is

involved in three offences. Out of the three offences, two offences are registered under the Prohibition Act and one been case is registered under the Suppression of Immoral Traffic in Women and Girls Act, 1956. Besides this, statements of three witnesses are also recorded and, therefore, in all there are six grounds for detention and, therefore, the petitioner has to satisfy how each ground is vague. He, therefore, urged that there is no merit in the petition and the same may be rejected.

5. I have considered the submission advanced by the learned advocates appearing for the parties. I have also perused the averments made in the petition and the order of detention so also the grounds of detention and the documents annexed thereto.

6. On having perusal of the record of the case, I am satisfied that page Nos.63 and 124 are illegible. So far as page 63 is concerned, it is in connection with the second case registered against the petitioner under the Prohibition Act whereas page 124 is concerned, it is in relation to the statement of independent witnesses recorded by the detaining authority on which the privilege is claimed. Therefore, so far as three grounds, that is, statements of three witnesses and the second cases registered against the petitioner for commission of offence under the Prohibition Act are concerned, right of the petitioner to make effective representation on account of non-supply of legible documents has seriously prejudiced and, therefore, four grounds on which the detention order is passed is vulnerable.

7. Now so far as the remaining two cases are concerned, one is under the Prohibition Act and another is under the Suppression of Immoral Traffic in Women and Girls Act, 1956 are concerned, the first case under the Prohibition Act was registered way back in the year 1999 and therefore on the stale material the order of detention came to be passed. Therefore, there was delay in passing the impugned order. The Supreme Court in Anand Prakash v. State of UP, AIR 1990 SC 516 has expressed the view that unexplained delay in passing the order of detention vitiates the order. Same view is reiterated by this Court in the case of Elesh N Patel v. Commissioner of Police 1997 (1) GLH 381. Therefore the order of detention based on the ground of first offence registered under the Prohibition Act is also bad in law.

8. So far as the last ground of detention is

concerned, it is with respect to registration of a case against the petitioner - detenu under the Suppression of Immoral Traffic in Women and Girls Act, 1956. Admittedly it is an isolated case. The detaining authority has recorded in his order that after releasing the detenu on bail he has continued the said illegal activity but there is no material to substantiate the aforesaid observation. Therefore, according to me, subjective satisfaction recorded by the detaining authority cannot be considered as genuine. Besides this, Section 2 (g) of the Act defines "immoral traffic offender" which means, a person who habitually commits or abets the commission of any offence under the Suppression of Immoral Traffic in Women and Girls Act, 1956. In this view of the matter the order of detention cannot be sustained and the petition deserves to be allowed.

9. For the foregoing reasons, the petition succeeds and accordingly it is allowed. The order of detention dated February 13, 2001 passed against the petitioner - detenu is hereby quashed and set aside. The detenu is ordered to be set at liberty forthwith if he is not required in connection with any other case. Rule is made absolute. No order as to costs. Direct service is permitted.

(A.M. Kapadia, J.)

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